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EPA Docket Center
Environmental Protection Agency, Mailcode: 2822T
1200 Pennsylvania Ave., NW
Washington, DC 20460
Email: a-and-r-Docket@epa.gov

Re: Proposed Air Toxics Rule – 76 Fed. Reg. 24976 (May 3, 2011)
Docket ID: EPA-HQ-OAR-2009-0234

Dear Administrator Jackson:

On March 16, 2011, the U.S. Environmental Protection Agency (EPA) announced its proposed rule concerning national emissions standards for hazardous air pollutants from coal- and oil-fired electric generating units and standards of performance for fossil-fuel-fired electric utility, industrial-commercial-institutional, and small industrial-commercial-institutional steam generating units (Air Toxics Rule). The proposed emissions standards are intended to limit mercury, acid gases and other toxic pollution from power plants. The proposed rule was published in the Federal Register on May 3, 2011 (76 Fed. Reg. 24976) with public comments originally due by July 5, 2011, approximately 60 days from publication in the Federal Register. Later, the EPA extended the public comment period by an additional 30 days making comments due by August 4, 2011. The Alabama Public Service Commission (APSC) appreciates the opportunity to file comments in this proceeding.

As noted in an earlier transmittal regarding this matter, the APSC regulates essential utility services throughout many parts of Alabama, including the electric utility service provided by Alabama Power Company. As a regulatory body, we are responsible for balancing the interests of our regulated utilities with those of the consuming public, with the ultimate goal being the provision of reliable service at rates that are fair and reasonable. To that end, the APSC must necessarily consider the impacts of any pollution control investments, plant retirements, investments in new generation plants, and other utility actions that may be triggered by compliance with the Air Toxics Rule.¹

¹ For this same reason, the National Association of Regulatory Utility Commissioners (“NARUC”) has urged state utility regulators to engage with EPA on this issue.

The issues we are raising are critically important to the citizens we serve and more than justify revisions to the proposed rule. Specifically, the APSC's comments are focused on: 1) cost-effectiveness, 2) reliability, and 3) regulatory flexibility. These considerations are all the more important given the current backdrop of the worst economic climate in Alabama in decades. This fact, coupled with the potential cost impacts of many other regulatory changes that the EPA is currently proposing, heightens our concern and lends further support for these comments urging a more judicious approach by the EPA.

DISCUSSION

1. Cost Effectiveness

The EPA's proposed Air Toxics Rule is of particular concern to the APSC. The proposed rule would impose new, stringent compliance obligations on fossil fuel power plants in Alabama that would entail significant costs, either in the form of additional control equipment or unit retirement and replacement. In the EPA's Fact Sheet for its Air Toxics Rule, the estimated total national annual cost of this rule is \$10.9 billion by the year 2016. Although the EPA has performed its own analyses of the cost impacts associated with implementation and compliance with the Air Toxics Rule, the APSC is not aware of a comprehensive study performed by the EPA, with the assistance of industry experts, that considers and explains the cumulative cost impacts resulting from implementation of, and compliance with, the Air Toxics Rule in the context of other recent proposals and regulations of the EPA. Examples of such other proposals and regulations include: greenhouse gas permitting rules for major modifications or new facilities; the boiler MACT or maximum achievable control technology rules; utility MACT rules; Ozone National Ambient Air Quality Standards; the Cross-State Air Pollution Rule; and the coal ash rule.

Due to the fact that regulated utilities will certainly have to consider the cost impacts of all proposed rules and regulations before making long-term decisions concerning resource planning, we feel it is of significant importance for the EPA to perform a comprehensive cost analysis. That analysis cannot merely examine each proposed rule in isolation, but instead should consider the cumulative cost impacts of all such proposals. Moreover, we believe it is important for the consuming public to be advised of the potential total rate impacts associated with implementing the full suite of the EPA's recent proposals and regulations.

For example, Rep. Ed Whitfield, R-Ky., chairman of the Subcommittee on Energy and Power, said the consulting firm National Economic Research Associates reviewed the Air Toxics Rule and the Clean Air Transport Rule (when it was proposed) and found the impact to include \$17.8 billion in annualized compliance costs and a total cost of \$184 billion (present value) for the period 2011-2030. The same review also projected an increase in average retail electricity prices of between 12 percent and 23 percent in certain regions of the country by 2016. What is even more alarming is that these estimates do not include a total comprehensive review of the agency's recent proposals and regulations, as referenced above. Considering the appreciable difference between this study and that of the EPA, the APSC strongly encourages the EPA to slow this process to allow sufficient time for a full and fair re-evaluation of its findings.

An additional concern of the APSC is the EPA's prediction that its proposal will cause a shift away from Alabama (*i.e.*, Appalachian) coal, resulting in a decrease of 8 percent in coal production. Like the nation as a whole, the state of Alabama has suffered during the recession and additional job losses from the coal industry will further exacerbate the problem. In short, the negative consequences of the proposed rule on Alabama coal producers will do nothing to alleviate these poor economic conditions, but will only make matters worse.

A further cost concern of the APSC is the impact that the proposed rule would have on wholesale power prices. According to most industry reports, the Air Toxics Rule, together with many other recent proposals and regulations, would lead to an expedited shutdown of tens of thousands of megawatts of existing coal-fired generating capacity. If this were to occur, many regions of the country would likely experience a shortfall in capacity for several years which can be expected to cause wholesale power prices to increase significantly. Again, these unnecessary costs would be passed on to customers who are already struggling with existing economic conditions.

2. Reliability

According to an EPA Fact Sheet, the Air Toxics Rule will affect electric utility steam generating units that burn coal or oil for the purpose of generating electricity for sale and distribution through the national electric grid to the public. Although the EPA expects that dozens of coal-fired plants already meet at least some part of the proposed standards, it further states that about 44 percent of all coal-fired plants lack advanced pollution control equipment. Specifically, the EPA estimates that there are approximately 1,200 existing coal-fired units and 150 oil-fired units at about 525 power plants that will be affected by this proposed standard. EPA has further stated that it expects most facilities will install technologies to comply with this rule. In our opinion, the compliance obligations and timeline associated with the proposed rule will threaten the reliability of the electric supply in Alabama with similar consequences resulting at the national level as well.

As previously noted, the APSC is concerned with the impact that the Air Toxics Rule will have on electric generation reliability – both on a stand alone basis and in combination with other rules. However, EPA's assessment appears to be limited in scope in that it does not consider the cumulative impacts on electric generation reliability that may result from compliance with the agency's other recent proposals and regulations. Similar to our concerns with the EPA's costs assessments, the APSC is not aware of a comprehensive study performed by the EPA, with the assistance of industry experts, which takes into account the many rules and regulations currently proposed or in progress. For this reason, the APSC is concerned that the EPA has not adequately addressed the impact of the proposed rule on the reliability of the electric system. Adding to this concern, it is expected that even controlled units will lose operational flexibility.

Due to the wide range of system reliability impacts being reported by industry, the APSC respectfully urges the EPA to re-evaluate its Air Toxics Rule both on a stand-alone basis and in combination with other rules and regulations recently promulgated or in progress. The industry and the public deserve a more comprehensive analysis from the EPA that would consider all factors and yield a true and correct reliability assessment report.

3. Regulatory Flexibility

To address our concerns with the potential costs and reliability impacts, the APSC believes that the EPA can do more to provide regulatory flexibility, consistent with Executive Order 13563, “Improving Regulation and Regulatory Review.” Issued by President Obama on January 18, 2011, this order generally requires agencies to consider costs and benefits, to ensure that benefits justify the costs, and to consider flexible approaches. While we are not experts on environmental policy, we believe there are several areas where EPA can and, due to the absence of any tangible benefits, should improve the level of flexibility reflected in its current proposal.

First, and most critical, is timing. The Air Toxics Rule only allows three years for compliance, with the possibility of a one-year extension given on a case-by-case basis. The APSC understands that when the court entered the consent decree setting the deadlines for the rule, it acknowledged that the timeframes were tight, and that it would be willing to entertain appropriate extensions. The APSC believes that it continues to be appropriate for the EPA to seek an extension of the court-ordered deadlines so that it can formulate a reasonable compliance period that would allow for the most cost effective compliance solutions while maintaining high levels of reliability. The large number of units that will be affected by the numerous rules and regulations recently promulgated, or in progress, by the EPA, combined with the implementation timeframe and the clear need to permit and construct replacement supply resources, demonstrates that a longer term for implementation of the proposed rule is both necessary and warranted.

In a similar vein, the proposed rule provides for the possibility of an additional one-year extension for implementation. However, from the perspective of a utility regulatory body, the “possibility” of a one-year extension does not rise to the level of assurance that is needed for purposes of resource planning and reliability. Utilities need to conduct firm and specific planning and have those plans approved by their respective commissions, all while maintaining a reliable supply of power. As a practical matter, it is quite difficult for responsible and prudent state regulators to approve utility plans for environmental compliance based on “possible” extensions of time. Hopefully, the EPA will be able to make the one-year extension a reality so that this additional time can be relied upon in the planning and evaluation process.

Lastly, the APSC firmly believes that any implementation schedule for the Air Toxics Rule should also consider other compliance obligations resulting from the agency’s other rules and regulations recently promulgated or in progress. The development of a stand-alone compliance timeframe, without considering other similar compliance obligations, would seem to fall short of a reasonable approach and could result in unnecessary costs and jeopardize electric generation reliability.

CONCLUSION

In closing, the APSC strongly urges the EPA to re-evaluate its proposal and revisit its modeling and analyses of the proposed rule to see why there appears to be such a large disconnect between various industry reports and the EPA’s own analyses. Second, we urge the EPA to conduct a comprehensive analysis, with industry input, in order to consider the total reliability and cumulative cost impacts resulting from the agency’s numerous rules and regulations recently promulgated, or in progress. Third, the APSC urges the EPA to modify the proposed rule in ways that are consistent with the above remarks and Executive Order 13563 to maximize available flexibilities. The aggressive nature of the EPA’s proposal will most certainly

impact the cost of providing electricity (at both the retail and wholesale levels) and thus significantly increase ratepayer bills. We would hope that EPA can use available flexibilities to temper these adverse impacts, and assure that good and quantifiable benefits are derived from the costs that are ultimately incurred.

If you have any questions or need additional information, please contact the undersigned at 334-242-9579 or john.free@psc.alabama.gov.

Sincerely,

/s/John D. Free

John D. Free
Electricity Policy Division
Alabama Public Service Commission